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FOREIGN NATIONALS AND INTERNATIONAL LAW.*

BY MR. B. SITARAMA RAO.

(*Continued from page* 51.)

Even the jurists of the school of natural or fundamental rights do not exclude the right of each State to take such measures or precautions as it considers needful to prevent the right of access and intercourse being used to its injury nor its power to subject foreign trade and foreigners to regulation in the interests of its own trade or the trade of any other States which it wants to favour—in other words, they justify the tariff policy of the continental States and the exclusion of undesirable aliens. American jurists who stand for colonial ideals have on the one side to insist upon the legal right of the State to exclude aliens and on the other to reconcile their views to the ideals of civilised life which they rely upon for claiming compensation from other States for inefficient administration of justice to, or imperfect protection of life and property of, their nationals. The British jurists are clear that discrimination against foreigners is an unfriendly act for which the States concerned may intervene but somewhat inconsistently speak of the unqualified legal right of the State to exclude foreigners or to subject them to restrictions. The British policy at home as reflected in the British Nationality and Aliens Act is one of equal treatment of foreigners and nationals but the reservation in favour of the

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Colonies to legislate on the matter and also to accord differential treatment to different classes of British subjects is a concession to the colonial point of view. In practice, the colonials have generally greater power to impose restrictions on Indians than on aliens and similarly Britain has smaller power to intervene on their behalf in the colonies than in foreign countries. It comes out about this way. In the case of aliens treaties so often come in the way of discrimination and even when treaties do not come in, the dread of retaliation from the State of the alien puts a wholesome check on the discriminatory zeal of the colony. None of these considerations applies to the dealings of the Colonies with respect to India, owing to the free hand given by Britain to the dominions to deal with the question. Britain is not hampered similarly in intervening on behalf of India with foreign States. The true rule of international law would seem to be as stated by Hall. He formulates it thus: "For the reason that a State may do what it chooses within its territory so long as its conduct is not actively injurious to other States, it must be granted that in strict law a country may refuse the hospitality of its soil to any or all foreigners, but the exercise of this right is tempered by the facts of modern civilisation. To exclude all would be to withdraw from civilised brotherhood, to exclude without reasonable or at least plausible cause, is regarded so vexatious or oppressive that a State may interfere in favour of its subjects." "If a country decides that a certain class of strangers is dangerous to its tranquillity or are inconvenient to it socially or economically or morally and if it passes general laws forbidding access to persons its conduct affords no ground for complaint. Its fears may be idle. Its legislation may be harsh but its action is legal." In *Attorney-General for Canada* v. *Cain*[1] the following extract from Vattel is cited with approval:—"One of the rights possessed by the supreme power in every State is the right to refuse to permit an alien to enter the State, to annex what conditions it pleases to such entry, to expel or deport from the State at pleasure, even a friendly alien, especially if it considers his presence in the State opposed to its peace, order and good government, or to its social and material interests." The case itself arose in connection with the expulsion of an alien. Oppenheim thus states the rule: "Apart from general

1. (1906) A. C. 542.

conventional arrangements, *e.g.*, those concerning navigation on international rivers, and apart from special treaties of commerce, friendship and the like, no State can claim the right for its subjects to enter into, and reside on, the territory of a foreign State. The reception of aliens is a matter of discretion and every State is by reason of its territorial supremacy competent to exclude aliens from the whole or any part of its territory. Every State is and must remain master in its own house and this is of special importance with regard to the admission of aliens. Of course, if a State excluded all subjects of one State only, this would constitute an unfriendly act against which retortion would be admissible but it cannot be denied that a State is competent to do this." "It is obvious if a State need not receive aliens at all, it can receive them only under certain conditions." Hearshey thus states the rule: "True it is that a modern State which excluded all foreigners would practically find itself outside the pale of international community and the exclusion of those of a particular nationality would probably justify measures of retortion in the form of reprisal but there can be no legal right in the premises." He quotes part of the passage above extracted from Oppenheim and cites also Rivier who says "the State is master in its own house. It may refuse to foreigners access to its territory, interdict all immigration or the immigration of certain individuals, for example, nationals of certain countries." This principle, he says, follows logically from the rights of independence and self-preservation but is to-day greatly hampered by the rights of mutual commerce and inoffensive passage. Reference to law and legal right is not quite relevant for the purpose in hand for, as their Lordships of the Privy Council point out in *Musgrove* v. *Chun Teeong Toy*,[1] though "no authority exists for the proposition that an alien has a legal right enforceable by action to enter British territory, circumstances may occur in which the refusal to permit an alien to land might be such an interference with international comity as would properly give rise to diplomatic remonstrance from the country of which he was a native". The question there was whether a Chinese immigrant had a right to compel a custom house officer in Victoria to accept the fee of £10 he was required to pay under a section of the Chinese Act of that State of 1881. The section

1. (1891) A. C. 272 at 282.

provided that before any immigrant arriving from ports beyond Victoria shall be permitted to land . . . the master of the vessel shall pay £10 for every such immigrant and no entry shall be deemed to be of any legal effect until such payment shall have been made." It was held to confer no right but merely to impose a condition for entry into the State. To the same effect is the judgment of Justice Gray in the *Nishinivaru case*[1]. He says: "This power (*i.e.*, of exclusion) is vested in the United States of America in the national government to which the Congress has committed the entire control of international relations in peace as well as war. It may be exercised through the political power of the Government either through decrees made by the President and the Senate or through Statutes enacted by the Congress." In exercise of this power the Chinese are totally excluded from the United States and with certain exceptions since 1924 all aliens ineligible for citizenship. Who these are, we have already considered. The class includes all people other than white people and people of African descent, that is to say, it includes the Indians, the Japanese, the Chinese, the Persians and so forth. The anti-foreign legislation dates from 1875. In 1917, an Act of the Congress levied a tax of 8 dollars from every one entering and further required every alien of over 16 years entering the State to have reading knowledge of some language. Among the excluded people are also the following:—"Idiots, imbeciles, feeble-minded persons, epileptics, insane persons, persons of constitutional psychopathic infirmity, people with chronic alcoholism, paupers, professional beggars and vagrants, people suffering from tuberculosis, or subject to a loathsome or dangerous disease, mental and physical defectives of a nature to affect the capacity to earn, polygamists and those that preach or encourage it, those convicted of felony or misdemeanours involving moral turpitude, those who believe or advocate overthrow by force the United States Government or of all forms of law, who disbelieve or are opposed to organised Government, who believe or advocate assassination or unlawful destruction of property, prostitutes and those that come for prostitution or for criminal purposes, contract labourers, paupers and those that are likely to be a

1. 142 U. S. 651.

charge on the public, deported persons, stowaways, children under 16 unaccompanied by a parent, aliens above 16 that cannot write English or some other language or dialect including Hebrew or Yiddish.

This prohibition did not extend to (1) Government Officers, Ministers of Religion, religious teachers, missionaries, lawyers, physicians, chemists, engineers, students, teachers, authors, artists, merchants and travellers from curiosity or pleasure, nor to their wives or children below 16 accompanying them or subsequently applying for admission. The Immigration Act of 1924 made ineligibility to become naturalised a ground of exclusion It attempted to control immigration by a system of consular visas or certificates. It improved the quota system, *i. e.*, the system of regulating the immigration on the basis of the proportion which the men of a particular nationality bore to the total strength of the United States population. This bore heavily on the southern and eastern nations of Europe and less heavily on the people of Northern and Western Europe. This quota system had been introduced under a previous Act of 1921.

The following were, however, non-quota :—

(1) Unmarried children under 18 of a citizen or wife of a citizen residing in the United States.

(2) Immigrants previously lawfully admitted returning from a temporary visit outside.

(3) Immigrants born in Canada, Newfoundland, Mexcio; Cuba, Haiti, Dominican Republic, South American people, their wives and children below 18.

(4) Ministers of Religion or college professors, their wives and minor children.

(5) *Bona fide* students of at least 15 years of age.

On examination it will be found that net is thrown far and wide and the grounds cover (*i*) Physical and moral defects, (*ii*) disease, (*iii*) profession or adoption of immoral or revolutionary doctrines or practices, (*iv*) poverty, (*v*) illiteracy, (*vi*) Asiatic origin, and (*vii*) racial prejudice.

Colonial ingenuity has found some further grounds of exclusion which are utilised for the purpose of masking discrimination. One such is the language test first adopted by

Natal, *i.e.*, writing the application in some European language including Yiddish. In the Colonial Conference of 1897 this test was suggested by Mr. Chamberlain as a preferable method of excluding Asiatics in that it did not involve discrimination nominatim but achieved all the same the desired end of excluding Asiatics. He conceded that the Colonies were entitled to keep themselves free from being overpowered by men of different civilisation, race and customs, but he objected to discrimination by name having regard to "the might, the high culture and traditions of India". This suggestion was adopted in West Australian Act XIII of 1897, New South Wales Act III of 1898, Tasmanian Act LXIX of 1898 and New Zealand Act XXXIII of 1899. A more effective method—the dictation test—was adopted by the Immigration Restriction Act, 1901. As the choice of language was left to the Government, the test in effect was a method of exclusion of any person and at pleasure. The adoption of a non-racial test was a concession to the Japanese and Indian self-respect. Japan could not be ignored by reason of its growing power and importance, and the Indians, being British subjects, forms had to be kept up. This test was employed by Cape Colony in Act XLVII of 1902 and South African Union in Act XXII of 1913. The New Zealand Government improved upon the language test by requiring the applicant to address the petition from his place of abode thus making it impossible for Indians to come to Fiji and there pick up English. Canada has discovered another method. It imposes the condition that any Asiatic immigrant must come from the place of origin on a through ticket purchased in advance and by a continuous journey. As there is no direct passenger steamship connection at present with India, the Indians are by this method successfully kept out of the dominion. The Australian Commonwealth seeks further to mollify Indian and Japanese self-respect by affording facilities for merchants, students and other temporary visitors to have free access to the country. An Act of 1925 of the Commonwealth of Australia clearly enunciates that it is not a question of racial discrimination at all with it but merely a question of securing one cultural type in Australia or of economic or social policy. Accordingly, the Act enables the Governor-General to forbid, either wholly or subject to numerical limitation, the entry of any nationality, race or occupation if he is satisfied that such entry is undesirable by reason of

economic, industrial or other conditions of the Commonwealth or that the persons specified are unsuitable for admission or that they are unlikely soon to be assimilated. This provision has been used against Italians thereby demonstrating the sincerity of the Australian professions that no discrimination is meant against only Asiatic races. The self-respect of the Chinese was not a matter of concern and they were dealt with more directly by imposing poll-tax, by regulating their admission by the tonnage of the vessels in which they came, starting from 1 to 10 tons ending ultimately in 1 to 500 tons, the poll-tax rising from £10 in the Victorian legislation of 1855 to £100 in a New South Wales Act. Notwithstanding the prejudice when there was a shortage of immigrants, Western Australia tried Chinese immigration and under an Act called Imported Labourers Registry Act, started a regular system of indenture. The Australian prejudice against Asiatics did not stop with immigration restrictions on apparent considerations of racial purity and economic competition from persons with a lower standard of life. The Post and Telegraph Act (XII of 1901) forbade the Government to enter into mail contract with ships not manned with white labour—a measure directed against Indian lascars. Mr. Chamberlain refused to accept it on the ground that the discrimination was purely racial and as such against the commitments of Britain by the Queen's proclamation of 1858 in India. As a result, the association of British and Australian Governments in the arrangements for the service ceased. A similar difficulty arose in 1906, when Mr. Deakin proposed preference to British goods provided the goods came by ships manned by white labour. The embarrassing position was providentially avoided as the bill had to be dropped for another reason, *viz.*, its incompatibility with treaties with Austro-Hungary and Russia. Japan has retaliated for the discourtesy shown to her by imposing higher tariff on Australian goods. So far as India is concerned the only action taken is the enactment of Indian Immigration Act (III of 1924) conferring powers on the Indian Government to make rules so that no greater rights and privileges as regards entry and residence are accorded to Colonials than those accorded to the Indians in the Colonies concerned. S. 96 of the Government of India Act is framed on a higher ideal of British citizenship and enacts that no subject of His Majesty resident in India shall by reason only of his

religion, place of birth, descent, colour or any of them be disabled from holding any office under the Crown in India. The Commonwealth of Australia Act in a lower key provides that a subject of the Queen resident in any State shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were the subject of the Queen resident in such other State the equality being thus confined to the Australian Colonial.

New Zealand started by taking action against the Chinese with the tonnage rule and poll-tax in 1881, gradually raised both, introduced the language test in 1907 and finally in 1920 by the Immigration Restriction Amendment Act adopted the principle of permitting the entry of none but British subjects by birth without permits (neither naturalised subjects nor natives of British Colonies, Dominions or Protectorates being included in the term "British subjects") and in the case of all but European British subjects requiring an application in writing from the place of abode.

It is a matter for reflection that a country with a population of 5 millions should be in occupation of an area of 5 million square miles and shut out British subjects on the mere ground that they are Asiatics when they cannot hope to adequately people the country for years to come and when their continuance in possession of the same as against a powerful Asiatic country like Japan is so much dependent on its adhesion to the Empire. This is how it strikes an American writer Mr. Gibbons (*Introduction to World Politics*, p. 516) "Australia with a greater area than the United States has scarcely more than 5 million inhabitants, five-sixths of whom live in the south-eastern tip of the continent and yet the Australian Premier said recently that the continent could support 100 million white people in their accustomed standard of living and in this opinion Lord Northcliffe concurred. New Zealand and South Africa have each scarcely more than a million white population and the possibilities of development are vast and yet these dominions clamouring for immigrants and sorely needing labour exclude Asiatics. This is the greatest problem in world politics to-day. By the most generous calculation of increase, Europe if she directed all her immigration towards these dominions could scarcely fulfil their needs for a hundred years. It is a case, as the Australian

Premier said, of safeguarding the patrimony of our great grandchildren. Will Japan and India wait a hundred years?"

Canada in addition to the rule of continuous journey already referred to also insists upon each person of the Asiatic race possessing 200 dollars in his own right. Japan by reason of Anglo-Japanese treaties of 1906 and 1911, which had been accepted by the Canadian Government without reservation, was in a favourable position and could not be denied free entry. But an understanding was arrived at with Japan in 1908 by which immigrants from that country were restricted to 400 a year and subsequently still further reduced to 150. The Imperial Conferences of 1917 and 1918 pronounced definitely in favour of the principle that Indians lawfully resident should be treated on a suitable basis while fresh immigration should be determined as felt best by the Dominions concerned subject to the rule that temporary visits for business or pleasure or educational purposes should be freely encouraged and regulated by a system of permits and that resident Indians should be permitted to bring in one legitimate wife and children duly certified as such. Canada has not yet carried out the promise; on the other hand has dodged out of it by so manipulating the federal franchise as to make it dependent on the local franchise and the Indians being disentitled to the latter are also disentitled to the former. The Commonwealth of Australia has honoured it by passing an Act giving Commonwealth franchise to Indians resident at least six months. The only humour in a situation so sad is the failure of the early attempts of British Columbia of keeping out Indians and Japanese for one unexpected reason or another. An attempt, for instance, in 1908 proved ineffectual so far as the Japanese were concerned as it contravened the Anglo-Japanese treaty and as regards others it was bad because the provisions of the Act conflicted with Dominion Immigration Law which authorised the landing of every immigrant not rejected by the medical inspector. The latter provision, aimed at preventing improper detention on other grounds, incidentally served to defeat the discriminatory legislation. In *Union Colliery Company of British Columbia* v. *Bryden*[1] prohibition against the employment of the Chinese labourers underground under the Coal Mines Regulation Act was held invalid as it was not a *bona fide* exercise of the power to regu-

1 (1899) A C. 580.

late mines but an attempt to drive the Chinese away by preventing them from making a living—a matter within the jurisdiction of the Dominion Legislature.

In South Africa, Natal which was built up largely by Indian labour was the first country to keep out Indians which it did by Act I of 1897 by imposing a language test. In 1902 Cape Colony passed an Act (No. 47) imposing a dictation test. The Transvaal Parliament by Act XV of 1907 excluded all Asiatics who had not already acquired a legal right to be there. After the advent of the Union things fared no better. Act II of 1913 contained a stringent education clause requiring the immigrant to pass a reading and writing test in a European language including Yiddish and S. 4 of the same Act authorised the minister to exclude any class of persons whom on economic grounds or by reason of standard and habits of life he deemed unsuited to Union conditions and, under the clause, Indians were all promptly excluded, save in very few cases where the Government might waive the provision. The right of entry of one legal wife and minor children under S. 16 of a lawfully domiciled Indian was qualified by the requirement that the marriage must be monogamous. As Muhammadan and Hindu marriages are polygamous in law, though they may in fact be otherwise, these were held to be outside the exemption. This injustice was removed by Act XXII of 1914.

Treatment of foreigners after reception.—" Logically, the principle of exclusive force of the corporate will within a territory, " says Hall, " would lead to the possession of an identical authority over foreigners and members of the State community during such time as the former remain in the country in respect of all acts done by them there, of relations set up between them and other persons, and of duties owed to the State and correlatively to such duties, they would temporarily have the same rights as natural born subjects. Existing law stops short of such assimilation. Until he has made himself a subject of the State, he has neither the privileges nor the responsibility of the subject. His allegiance to his own State is recognised intact and he cannot be obliged to do anything inconsistent with it or to render service to the State into whose control he has come. On the other hand, he has no right to protection or good treatment except to the extent the State can demand." "He is respon-

sible to it for all acts he commits on its territory even though the territory might be in the occupation of the enemy. *De Jager* v. *Attorney-General of Natal*[1]. He is subject to all administrative arrangements made by it which concern the very locality where he is. If in consequence of public calamity, such as outbreak of fire or an infectious disease, regulations are made they can be equally enforced against him. The State has a wider power over aliens that reside more or less permanently than those that are merely travelling and stay temporarily. The former can be made to pay rates and taxes and may even be compelled in case of need to serve in the militia or local police." Hearshey, while conceding that a State may impose all the ordinary taxes on aliens, says that they are not bound to submit to the exaction of forced loans or to taxes which are discriminatory or confiscatory. They must obey all reasonable regulations for their welfare or for the convenience of local authorities, such as vise, passports or registration. The Indian Act (III of 1864) requires a foreigner to take out a licence for travelling.

Jurisdiction of Courts over foreigners.—Most modern States permit the use of their Courts to friendly aliens. Under the English Act aliens are triable in the same manner as subjects. Under the Indian Criminal Procedure Code foreigners are triable in the same manner as Indians but in the case of Americans and Europeans they have the right of European jury if possible. France alone of all countries does not take cognizance of disputes entirely between foreigners. The United States recognises the right of foreigners to resort to the federal Courts. Some countries assert jurisdiction over foreigners for acts committed outside, *e.g.*, Italy, Turkey, China and Mexico. Other States do not assume jurisdiction in those circumstances, *viz.*, England, America, Germany, Spain and France. The majority in the *Lotus* case have expressed however that there is no rule of international law which prohibits a State from exercising jurisdiction over a foreigner in respect of an offence committed outside its territory. (Oppenheim, 282—284.) Lord Finlay thought otherwise. He is supported by Oppenheim, Hall and Hearshey. The Institute of International Law which met at Munich adopted the following article as embodying the right rule on the matter: "Every State has a right to punish acts

1. (1907) A. C. 326.

committed by foreigners outside its territory and violating its penal laws when those acts contain an attack upon its social existence or endanger its security and when they are provided against by the criminal law of the territory where they take place." The League Codification Committee however came to the conclusion that in view of the diversity of practice, international regulation was not practicable on the matter. Some writers who deny the lawfulness of extra-territorial criminal jurisdiction over foreigners generally, nevertheless concede it when, though the perpetrator is corporally abroad, his act takes effect within the territory.

British treatment of foreigners within.—Apart from protection of person and property, every State can treat aliens according to discretion. Thus a State can exclude an alien from certain professions and trades. It can exclude them from holding property. Before the world war, the tendency was to treat the subjects and aliens on more or less the same footing. It is no longer so. Sections 17 and 18 of the British Nationality and Aliens Act relate to the capacity of aliens to hold property. S. 17 declares the right of an alien to take, acquire, hold and dispose of property, real and personal, in the same manner as a natural born subject and similarly provides for title being derived through, from, or in succession to an alien in the same manner as though, from or in succession to a natural born British subject. S. 17 does not, however, confer any right to hold real property outside the United Kingdom or confer any qualification for any office or for any municipal, parliamentary or other franchise or to the ownership of a British ship or to rights or privileges of a British subject except as those provided. Nor do those provisions take away or abridge any power vested or exercisable or government of any British possession or the operation of any law in force or prevent any legislature or Government from treating differently different classes of British subjects. The Aliens Restrictions Act of 1919 imposes further disabilities on aliens, *viz.*, no alien is to hold a pilotage certificate for any pilotage district in the United Kingdom or to act as a Master, Chief Officer or Chief Engineer of a British merchant ship registered in the United Kingdom or as a skipper or second hand of a British fishing boat or to receive an appointment in the Civil Service. An alien can be challenged as a juror on the very ground that he is an alien.

American Legislation respecting foreigners.—Under California Act of 1920 aliens not eligible for citizenship cannot hold any interest in land except such rights as are allowed by any treaty. The same is the case in Arkansas (Acts 209 and 249). In New Jersey and South Dakota, foreign nationals are not permitted to carry on certain professions such as that of physicians; in Michigan, the profession of dentists; in West Virginia and Utas, that of pharmacist; in Michigan, that of certified public accountant; in Colorado, that of shorthand reporters. The law of Arizana requires employers of five hundred or more workmen to employ at least 80 per cent. American citizens. (Foulke, p. 31.) In Grenada, by an ordinance of 1922, aliens and companies under alien control are prevented from holding land or interest in land without a licence from Government. Another ordinance No. 13 of 1922 provides that no alien can carry on missionary solicitation or philanthropic work without permission.

French treatment.—In France every alien should have an identifying card which amounts to a permission to reside and has got to be renewed every two years.

Colonial legislation as to Asiatics: Australia.—The restriction on Asiatics including British subjects in the Colonies beat all these records and constitute a code of international practice which is hardly in harmony with the general practice of States

After an ineffectual attempt in 1876 to levy higher mining and trading taxes from the Chinese, in 1878 Queensland forbade Asiatics or Africans to work on goldfield for three years after proclamation unless they were finders. In 1877 Act 961, Victoria initiated a factory legislation discriminating against the Chinese. In 1886, Western Australia forbade African and Asiatic aliens for 5 years from holding miner's right. By Act XIII of 1904 Queensland imposed disabilities on Asiatics as regards obtaining agricultural advances but rendered it less offensive to Japan by extending it to all aliens by Act XV of 1905. By Act VIII of 1904 and Act IX of 1910, the language test was adopted as a convenient mask to exclude the Asiatic, the absurdity of using it to test the fitness of a person to work in a margarine factory notwithstanding. In 1912-13 Asiatics were prevented from taking part in sugar industry. (Queensland Act IV of 1913, Commonwealth Acts XXV and XXVI of 1912.) Banana Industry Preservation Act (III of 1921) prevents Asiatics

having a share in the banana industry. An attempt was also made to exclude the Japanese from the pearl shelling industry but as the Commission appointed to consider the question reported against the wisdom of the step, the legislation was dropped. The Factories Act of 1904 (No. 22), the Mining Act of 1904, Early Closing Amendment Act of 1904 and finally the Factories and Shops Act of 1920 are the further anti-Asiatic measures of Western Australia. A factory ordinarily requires four or more workers to fall under the regulation but a less number is sufficient if they are Asiatics. No Asiatic can work for longer hours than a woman, that is to say, before 8 A.M. and after 5 P.M. No Asiatic can be registered as owner or occupier unless he carried on the business before 1st November, 1903. All furniture imported or manufactured in the State must be legibly stamped "European labour or Asiatic labour" as the case may be. Chinese laundries were the special objects of attack in some of the Statutes.

South Australia ran the same course in Acts 763, 837 and 890.

In 1910 the northern territory forbade the employment of an aborigine by an Asiatic, not being person born there, ostensibly in the interests of morality.

New South Wales wanted to enact similar legislation against Asiatics but finally restricted it to the Chinese.

In 1907 New Zealand made an effort to penalise Australia in a factory measure but this was given up in order to avoid necessity for reservation. In 1910, an Act regarding factories was in fact but not in form, aimed at Chinese laundries. In 1920, a still more violent measure directed against lascars was taken in hand which proposed to exact on the bills of lading and passenger tickets issued for trade from the dominion to Australia a sur-tax of 25 per cent. unless the vessels complied with the New Zealand conditions of coastal trade. The measure did not, however, become law.

Franchise in Australia.—By Act I of 1905, Queensland deprived all Asiatics of franchise which hitherto they had for the assembly if they held a freehold qualification. Act XXVII of 1907 did the same for Northern Australia. Southern Australia had already done the same the year before. However in 1923 in pursuance of the policy accepted at the Imperial Conference of that year of dealing fairly with the Indian

residents while strictly excluding future entrants Commonwealth franchise was conferred on natives of British India. It remains to be seen how much response the new policy will have in the States and New Zealand.

Pension Benefits, etc.—The Commonwealth excluded Asiatics and Africans from the benefit of the Pensions Legislation, 1908, Invalid and Old Aggressions Act, 1908-25 and Maternity Allowance Act, 1912. The Act of 1908 did not, however, penalise Australian Asiatics and the other Acts were amended so as to extend the benefits to British Indians born in India if resident in Australia. That was in pursuance of the fair dealing promised at the Conference in 1923.

Other Disabilities.—In 1910 a proposal was made to prohibit marriage between Asiatics and Europeans. That was, however, considered too much even for Australia.

Canada.—British Columbia was the first to betray signs of the anti-Asiatic bias. In 1898 it inserted in a number of private Acts, clauses forbidding employment of Chinese and Japanese under a fine of four dollars per head per diem. Its Labour Regulation Act and Tramway Incorporation Act were also directed against the Japanese. The Japanese Government protested and the Imperial Government got the bill disallowed on the ground that nominatim discrimination was improper. In 1899, a Liquor Licenses Act and a Coal Mines Regulation Act similarly motived were also disallowed. In 1900, a Liquor Licenses Act was passed which was directed against the Indians also. It was not disallowed as the provisions were not of great account. Notwithstanding the promise at the Conference of 1917 and 1918 of dealing fairly with the resident Indians, the Franchise Act was so amended in 1920 as to deny the franchise to any person disenfranchised in respect of local assemblies, thus taking away the possibility of Indian voting in British Columbia as that Province has by the Provincial Elections Act of 1897 disenfranchised the Indian, the Chinese and the Japanese alike, and the Privy Council had upheld the legality of the legislation in *Cunningham* v. *Tomey Homma*[1].

South Africa.—Natal which had grown up by the energy of Indians was the first to seek to depress the Indian. By Act XVIII of 1897 a blow was aimed against Indian merchants enacting that they should hold licences if only they could keep

1. (1903) A. C. 151.

accounts in England, a rule extended by interpretation to mean that they must be able to do so personally. Under Act VIII of 1896, they were deprived of franchise on the ground that they had no parliamentary institutions in their homeland. Russians though similarly situated did not fall under the exclusion. In 1905 it was sought to deprive them of the municipal franchise also but assent to it was refused. In 1908 three bills were promoted, one to prohibit further grant of licences to Indian dealers, one to terminate the licences existing after some time and one to take away the franchise. These, however, did not become law. In 1909 an Act was passed giving a right of appeal to the Indians from refusal to grant or renew licences as that was the cause of considerable injustice.

Transvaal.—Here the record is worse. Act III of 1885 refused to allow any Indian to acquire citizenship. It forbade ownership of real property and required Indians to reside in locations. The British Government protested but the Court to which reference was made upheld the legality of the confinement in the locations. The treatment of the Indian was one of the alleged main causes of the Boer War, but the position of the Indians became worse after the war. Lord Milner, as Governor of Transvaal, far from remedying the grievances, proposed to segregate the Indians in separate trade and residental locations with a promised exemption in favour of Indians of education and standing and the strictness of administration of the laws under the new regime as contrasted with the laxity of the old made the position of Indians a good deal less favourable. Sir A. Lawley went further and proposed legislation compelling separate residential and trade locations for Indians unless they were certified to be living in European style. But by that time, the Supreme Court held that the Act of 1885 did not justify location for trading and Lyttleton though prepared to agree to future exclusion of Indians was not prepared to accept this piece of unjust legislation depriving them of their old rights. He said that the apprehended trade competition from a small number of British Indians who, under restriction of immigration, must form a diminishing proportion of the population, could not be accepted as a justification for the legislation proposed. He further added, "His Majesty's Government had steadily declined to allow the fear to influence their views in the past. On the contrary for many years they had

repeatedly protested before the Empire and the civilised world against the policy and the laws of the late South African Republic in relation to this subject. It was contrary to national honour to go back." He agreed to location for residence on sanitary grounds but declined to apply any more severe restrictions to new-comers. The Liberal Government that succeeded, under Lord Elgin and Mr. Churchill, "made no effort," says Sir Borradaile Keith, " to secure the elementary right of Indians before granting responsible Government " though when they were prepared to give that concession, " they had every right to make it conditional on the Boers a decent treatment of Indians as a counterpart to the generosity shown to them". "Of the melancholy pages of British History, few are darker," he adds, "than that of Conservative and Liberal Governments alike in their attitude to the question of Indians in the Transvaal and while the wisdom and the magnanimity of the grant of responsible government to conquered aliens must be recognised, it is deplorable that no room could be found for justice to other British subjects. The responsibility must be shared by the Indian Government, the India Office and the Colonial Office, all animated like the Boers with contemptuous indifference for a race which appeared content to acquiesce in military domination and by the Indian people who in their internecine feuds had allowed themselves to accept the protection of aliens and had not even been roused to self-assertion by the example of the Japanese and the Chinese races without any claim to Indo-European blood." When the new constitution came into force, Lord Elgin tamely agreed to the Asiatic Registration Act. By Act XV of 1907 the Transvaal Government took power to exclude all Asiatics who had no legal right to be there and to deport from the Colony any person believed to be detrimental to the peace, order and good government. The Imperial Government begged that men of rank should not be excluded and that deportation should be confined to persons convicted of crime, that at least they must be allowed a chance to appeal. With that protest or entreaty it allowed the bill to become law. Transvaal Gold Act XXXV of 1908 imposed further disabilities. No right under that law could be acquired by a coloured person and no holder of a right under that law (claim licence or stand licence-holder) might permit any coloured person except his *bona fide* servant to reside

in or occupy ground held under such right. No coloured person is allowed to reside in proclaimed land except in bazaars, locations or mining compounds. Transvaal authorities further showed their indifference to Indian feeling by refusing to allow Muhammadan prisoners to observe their religious fasts and by compelling Hindus to do degrading work entailing loss of caste. They forcibly deported Indians over the Mozambique frontier and the Portuguese by agreement deported them promptly to India. The Orange River Colony had kept Indians out since 1890 and by an Act XII of 1907 allowed admission only to men of standing. There were also minor galling restrictions, such as rules which forbade Indians to use side-walks, to ride in covered cars, or to travel in first class or inside the trams.

The Union promised better things—treatment of Indians being reserved for dominion legislation. The only concession made is permission given for the entry of a wife and children by Act XXII of 1913. The difficulty as to monogamy which was exploited by all the Colonies to oppress the Indian had also been availed of by the South African Government but has been since remedied by an Act XXII of 1914. The rule prohibiting landholding had been evaded by the Indians by resorting to incorporation. This was prevented by Act XXXVII of 1919 but it gave every trader who was carrying on business on 1st May, 1919, right to continue the same. Prohibition of transfer to Asiatics was made to apply to Companies with one or more Asiatics having controlling interest therein. In 1924 General Smuts wanted to pass a Class Areas Bill enforcing segregation of Indians for both trading and residential purposes. In 1925 a Colour Bar Bill was proposed debarring an Asiatic from skilled labour down to the raising of lifts. The Bills were lost. But in 1926 a Mines and Works Act Amendment Bill was passed that in mining areas, certificates of competence in occupation shall be granted only to European and certain other classes known as Cape Malays and so forth. As Mr. Keith observes in his book on "Imperial Unity" unlike the Australian Commonwealth, the aim of the South African Government in these things cannot be "racial purity nor the danger of introduction of natives of an inferior race for the South African negroes are far inferior to the British Indian in all regards and indeed many of the Europeans who oppose their success as

traders so bitterly are really Jews of very low and undesirable class who do not know English and who obtain entry only by their knowledge of Yiddish which for purposes of the Immigration Act is classified as a European language. From the foregoing summary it is amply clear that the exclusion of any class of aliens from the country or from particular industries or *a fortiori* imposition of restrictions in pursuance of a settled economic or social policy of the Government or in accordance with the views entertained about the national type to be developed or out of consideration for the development of home industries or to prevent the swamping of the country or its industries by foreigners, not to speak of considerations of national safety, is quite in accordance with international law and a foreign State cannot complain so long as it is not insulted directly by patently offensive legislation or its nationals are not subjected to inhuman or uncivilised treatment. These conclusions, however disastrous they might have proved to India in the other countries as the previous narration has shown, are not without use for her in the future ordering of her affairs and no reasonable person can object to her insisting upon similar liberty in respect of these matters.

Expulsion of aliens.—The right of expulsion is the complement of the right of exclusion. Though it is true that a State has got power to expel even a friendly alien at pleasure, an expulsion without reason is an unfriendly act especially in the case of persons who have been residing some time or carrying on business. The State of the expelled person is entitled to ask for the reasons of expulsion and failure to supply the reason would be a very unfriendly act. Every expulsion without just cause can be rightly met with retortion. Expulsion is not a punitive measure and should not be performed in an arbitrary or needlessly injurious manner or for an insufficient cause. Unless there is imperative reason or urgency he should be given reasonable time to adjust his affairs more especially in the case of a domiciled alien with business and property interests. There should also be no discrimination because of race or religion. If these rules are violated, indemnity might be demanded by the State—arbitration on failure and finally retortion. (Hearshey.) States possess very much larger powers of expulsion in times of war or grave emergency than in normal times. In England till 1919 the Government had no

power to expel a foreigner except by recourse to Courts under S. 3 of the Aliens Act of 1905 or to Parliament or in times of war in the face of imminent danger or in grave emergency. The grounds of expulsion are enumerated in S. 3 of that Act. Restrictions on Aliens Act of 1914 gave power to His Majesty by order in Council in times of war, grave emergency, etc., to prohibit entry, expel, deport, or confine, or restrict movements of aliens. The Act of 1919 relating to the same matter extended the power for a further period and also gave power to supersede or incorporate the provisions of the Act of 1905. In Switzerland, Art. 70 of the Constitution empowers the Government to expel only such aliens as endanger the internal or external safety of the land. Belgium since 1885 possesses a law enumerating just causes. Many States however do not possess any rules and the power is vested in the Executive. Here, in India, we have the Foreigners Act (III of 1864) which gives power to expel but does not set out the grounds for expulsion. The Institute of International Law at its meeting at Geneva in 1892 drew up a body of 41 Articles concerning the admission and expulsion of aliens and in Art. 28 enumerated nine just causes for expulsion. Many of these like conviction for crimes are recognised grounds but others are doubtful.

An alien cannot be prevented from leaving the country provided he has fulfilled his local obligations and he can take his property with him and he cannot be taxed in respect of the same. There used to be a law known as *Droit de aubaine* now obsolete which entitled a State to confiscate the property of a dying alien. Under the British Finance Act, duties are levied on movables in England of an alien dying abroad though he was not residing at any time in England. The international validity of this rule is questioned.

Extradition.—Fugitive criminals may be extradited on request, but in the absence of treaty there is no obligation to do so. According to Clarke, refusal to surrender is a serious violation of the moral obligation which exists between civilised countries. Fiore calls it "the duty of mutual aid and assistance," Despagnat, "theoretical obligation not positive obligation". Rivier alone holds that there is a positive duty even in the absence of arrangement. At present the matter is governed by Extradition treaties. Except in Great Britain and America, States refuse to extradite their own subjects. It is customary

in England and the United States to require such evidence of guilt according to the laws of the country where the fugitive is found as would justify his commitment for trial. This is not however by reason of any principle of international law. The modern usage is not to extradite for political offences. England, it will be found, has been particularly tender in the course of her history to people running from political prosecutions or religious persecution. These are admitted though they have no apparent means of subsistence. See the Aliens Act of 1905, S. 1. There has been no satisfactory definition of political offences. The Institute of International Law at Geneva has adopted the following rule, viz., that there shall be no extradition in such cases, unless accompanied by crimes of great gravity, such as murder, manslaughter, mutilation, grave injury or robbery, in the case of an insurrection or Civil War unless they are acts of odious barbarism or vandalism forbidden by the laws of war and even then only when the Civil War is at an end that the extradition should take place. In the case of crimes of a composite character, Westlake is of opinion that the State to which the person is extradited should give an undertaking not to try him for a political offence. (1 Westlake, 256-267.) Asylum can be extended to political offenders in warships, legations, consulates or even on merchantmen under certain circumstances. When a person has actually escaped to a foreign country and then taken passage on a foreign merchantman even though it happens to visit home port, the rule protects him. Except in Spanish American States and the Orient no right is at present recognised in consulates and legations to do so. A different practice prevails in the case of warships. This right belongs to the State and no corresponding duty is attached to this right. If the warships or legations harbour ordinary criminals, even then the home State cannot seize them directly but have to make demands through diplomatic channels and, if refused, the hospitality of the port might be denied to the State thereafter.

CRITICAL NOTE

ON

ALIMANE SAHIBA *v.* KOLISETTI SUBBARAYUDU, 63 M. L. J. 303.

The plaintiff in this case has been saved by the accident of the pronote sued on having been marked as an Exhibit before it was discovered that the stamp affixed thereto had not been cancelled as required by S. 12 (1) of the Stamp Act. Can it be the policy of the law—be it Stamp Law—to enrich a defaulting borrower (it is the duty of the maker to affix necessary stamp to the pronote and cancel it) at the expense of the innocent lender, however large the amount involved in the transaction is. The case thus calls for a very close examination from all points of view.

It has been assumed in the case that an instrument sufficient stamp to which has been affixed but which stamp has not been cancelled as required by S. 12 (1) of the Stamp Act is not admissible in evidence under the provisions of S. 35 of the said Act which precludes admissibility in evidence of pronotes *inter alia* which have not been "duly stamped". S. 12 does not, however, enact that an instrument bearing the necessary adhesive stamp but which has not been cancelled as required thereby must be deemed to be one "not duly stamped". What it prescribes is that such an instrument "so far as such stamp is concerned be deemed to be *unstamped*". What does that expression mean? So far as I have seen, its meaning has not been the subject of consideration in any decided case. All the cases referred to in the case under consideration as also those which rely on them and others are either cases in which the instrument was not stamped at all, *Muthu Sastrigal* v. *Visvanatha Pandara Sannadhi*[1], *Pothi Reddi* v. *Velayudasivan*[2] or cases in which the instrument was insufficiently stamped, *Krishnaswami Pillai* v. *Rangaswami Chetti*[3], *Dhaneswar Sahu* v. *Ramrup Gir*[4], *Sudhir Chandra Das* v. *Gobinda Chandra Roy*[5], *Chanda Singh* v. *The Amritsar Banking Company*[6], *Nasir Khan* v. *Ram Mohan*[7], *Kunwar Bahadur* v. *Suraj Bakhsh*[8]. We are therefore left to cull the meaning of the

1. (1913) I.L.R. 38 Mad. 660 : 26 M.L.J. 19. 2. (1886) I.L.R. 10 Mad. 94.
3. (1883) I. L. R. 7 Mad. 112. 4 (1928) I. L. R. 7 Pat. 845.
5. (1917) I. L. R. 45 Cal. 538. 6. (1921) I. L. R. 2 Lah. 330.
7. (1930) I. L. R. 53 All 114 (F. B.).
8. A. I. R. 1932 Oudh 235.

expression on general principles of construction, primarily on the language used. The very expression "deemed" carries with it the idea that the instrument is not intended to be treated as unstamped for all purposes but only for a limited purpose. The expression is further subject to the qualification that it should be "deemed to be unstamped" only "so far as such stamp is concerned". Hence it is clear that it is not intended that the instrument should be altogether void and of no effect but that it should be taken to be good and of effect except that the stamp affixed thereto will be deemed to be not stamped so far as such stamp is concerned. What is the precise limit of the exception is the question. The expression cannot have been intended to mean that an instrument of the kind in question should be treated as one "not duly stamped". Were that the intention, nothing was easier than for the draftsman to have expressed himself in the terms "duly stamped" which have been defined in the Act. It is not easy also to bring such an instrument as one not "duly stamped" within the definition of the term in the Act. It is thus defined:

"'duly stamped,' as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in British India."

Now the instrument in question bears adhesive stamp of the proper amount; stamp has also been affixed to it and the affixture cannot be said to be not in accordance with the law in force. The omission here lies in failure to cancel it as required by S. 12 (1) which cannot, without unduly straining the language, be said to be "not *used* in accordance with the law in force in British India". This last mentioned expression has obviously reference to the mode of writing on impressed stamps prescribed by Ss. 13 and 14. It may be said that the instrument, notwithstanding that it bears an adhesive stamp, should be taken as not bearing it with reference to S. 12 (2). Definitions are intended to shorten the language employed in the main provisions of Acts and to explain them. But to understand a definition by reference to a provision in the body of an Act will be to reverse the process.

Again S. 33 (2) which directs persons having authority to receive evidence and persons in charge of public offices except police officers, to examine all instruments produced or coming before them for the purpose of impounding instruments not

duly stamped, gives the purpose as "in order to ascertain whether it is stamped with stamp of the value and description required by the law in force in British India when such instrument was executed or first executed". It will be seen that examination to ascertain if adhesive stamp affixed has been duly cancelled is not referred to here. That in itself may not mean much. But there is no provision in the Act indicating the procedure to be adopted by the Collector in the case of such an instrument if it is treated as one not duly stamped. True there is no such provision also in the case of bills of exchange, promissory notes and instruments chargeable with a duty of one anna only or half an anna only and which have not been stamped or insufficiently stamped and which are excepted from the provisions of Ss. 35 and 40 (1). That may serve to cast a doubt as to the correctness of the stricter view held by the Madras High Court and the Courts which adopt that view, *viz.*, that the promisee in cases where the transaction is simultaneous with the execution of the instrument is without any remedy whatever. I shall not further pause here to consider which of the two conflicting views held on the point is correct.

Suffice to say that both the Negotiable Instruments Act and the Indian Stamp Act have been adopted from the corresponding English enactments and when under the English law it is conceded that in spite of the instrument not being properly stamped, it is permissible to a party to recover money lent by him independently of it, there is no reason why a different policy should be conceived in India where commerce is in the cradle and industry still in infancy. If codification here has produced a result which was not in the minds of the framers it is meet that legislature steps in to rectify what it never meant.

I here confine myself to an instrument the stamp affixed to which has not been cancelled. Does the function of the Collector lie in merely considering if the instrument and others excepted from the provisions of Ss. 35 and 40 (1) call for a prosecution or not under the provisions of S. 62 or S. 63. The Act, however, does not expressly say so anywhere.

It should be pointed out also that S. 47 allows a person to whom a bill of exchange, promissory note or cheque chargeable with the duty of one anna is presented for payment *unstamped*, to affix the necessary stamp thereto and cancel it and recover the amount of the stamp from the person liable to it

and such an instrument is deemed valid and good so far as the duty is concerned. Is an instrument bearing the necessary stamp but which stamp has not been cancelled within the purview of this section ? In other words, does the section include the case of instruments falling under S. 12 (2) which though stamped must be *deemed* to be unstamped ? There is no reason why the law should be harder than in the case where it is not altogether stamped. Then why should an instrument of the kind when produced before a Court meet with such a severe treatment to an innocent holder ?

Lastly, but not the least, while S. 62 makes execution, etc., of not *duly* stamped instruments an offence, S. 63 makes failure to cancel as required by S. 12 also an offence. As the punishment provided by the former section is Rs. 500, there is no necessity for the latter section which provides for a fine of Rs. 100 only in case an instrument falling within the latter section is treated by the legislature as one not duly stamped. On the whole, I am led to think that an instrument bearing sufficient stamp but which stamp has not been cancelled is not inadmissible in evidence but that the only penalty in such a case lies in prosecuting the defaulter under S. 63.

KHAN BAHADUR MD. FAZLUDDIN SAHIB,
District and Sessions Judge (Retd.),
Chidambaram.

SUMMARY OF ENGLISH CASES

In re WILLIAM C. LEITCH BROTHERS, LIMITED, (1932) 2 Ch. 71.

Company—Winding up—Companies Act, S. 275—Company carrying on business with intent to defraud creditors—Meaning of —Liability of director—Extent of.

Section 275, sub-sec. (1) of the Companies Act, 1929, provides as follows:—"If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the Official Receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limi-

tation of liability, for all or any of the debts or other liabilities of the company as the Court may direct"

If a company continues to carry on business and to incur debts at a time when there is to the knowledge of the directors no reasonable prospect of the creditors ever receiving payment of those debts, it is, in general, a proper inference that the company is carrying on business with intent to defraud. If a director knowing of the position deliberately goes on trading, then under S. 275 of the Companies Act, he becomes liable to an extent which is in the discretion of the Court Under S. 275 there shall be a declaration against the guilty director for a definite amount "S. 275 is in the nature of a punitive provision, and where the Court makes such a declaration in relation to all or any of the debts or other liabilities of the company, it is in the discretion of the Court to make an order without limiting the order to the amount of the debts of those creditors proved to have been defrauded by the acts of the director in question, though no doubt the order would in general be so limited."

ELLIS *v.* NOAKES, (1932) 2 Ch. 98.

Tort—Conversion—Sale of land excluding timber—Timber to be cut and removed before October 11—*Timber cut, but not removed by that date—Sale of timber by vendee of land—If valid.*

L sold his estate to defendants excluding the timber standing thereon, and then sold the timber to the plaintiffs by a conveyance which stated that "the timber was to be cleared as stated in the catalogue particulars and by date therein stated"

The conveyance to *L* excepted from it and reserved to the vendor or his assigns the timber, tellers, saplings, poles, etc., on the land with full right and liberty to the vendor or his heirs and assigns to enter upon the hereditaments at all times up to 11th October, 1927 and to fell and remove all timber from there. The timber was sawn on the ground by September 3rd, but the planks so sawn were not removed by October 11, and when the plaintiff endeavoured to remove them after that date, the defendants refused him facilities and alleged that they became their property and were sold away by them.

Held, that it is not a conditional exception only depending on whether they are removed before October 11. The property in the trees is in the person to whom they were reserved and the time limit does not import a condition into the exception or render the property in the timber one which upon the failure to comply with the time limit, causes a reverter of the property in the timber to the purchaser of the hereditament. On account of this time limit, the right of the vendor or his assigns to enter upon the land after October 11 may be open to doubt but the conveyance does not operate to confer any estate or interest in the timber upon

the purchaser of the land, and the defendants were liable for conversion

Wray, J.'s opinion in (1584) 1 Leonard 275 followed.

Ellis *v.* John Stenning & Son, (1932) 2 Ch. 81.

Tort—Conversion—Timber excepted from sale of land—Timber sold to another purchaser after date fixed for removal of same from land—Purchaser of timber refusing to return the timber—Liability to—Prior judgment in suit between landowner and timber owner—Unsatisfied—If bar to the present action

A certain estate was sold by *L* to *N* in 1925 and by that conveyance the timber standing on the land was excepted from the conveyance and reserved to the vendor or his heirs or assigns with liberty to enter on the land and cut and remove them by October 11, 1927. The timber was cut and sawn by then (*i.e.*, October 11) but not removed. Thereupon *N* sold the timber to the defendants *L's* assign brought an action for damages for wrongful conversion and obtained judgment [*vide* (1932) 2 Ch. 98] but he took no steps to enforce the judgment and it was unsatisfied. He then wrote a letter to the defendants stating that the sale of the timber to them by *N* was ineffective, as they had no title to the timber, and asking for its return or the payment of its value forthwith

Held, that for the decision of the question, it makes no difference whether the defendants had or had not notice of the plaintiff's claim to the timber when the agreement to purchase it from *N* was entered into. For if in fact the timber was at those dates the property of the plaintiff, any dealing with it so as to deprive him of his property, with or without notice of his right, would constitute as against him a conversion of the timber. The conversion now complained of is not the purchase of timber from *N* but the refusal by the defendants to deliver up the timber, and if the refusal cannot be justified it constitutes a tort quite distinct from that arising out of the sale and purchase agreement and one in which *N* took no part. The prior action is therefore no bar to the maintainability of the present suit.

A judgment in trover whether in the alternative form or is merely a judgment for the value of property or for damages for their conversion does not in any way affect the title to the property of the plaintiff or his right to recover on the judgment so long as it is unsatisfied. A plaintiff in these circumstances may exercise all his rights as owner notwithstanding the judgment. Only he cannot in any case obtain a double satisfaction. Therefore unless actual satisfaction of the judgment is obtained, or the plaintiff does any act sufficient to constitute confirmation by him of the title to the timber in *N*, the defendants cannot retain the timber and were liable to damages.

E B. SAVORY & COMPANY *v.* LLOYDS BANK, LIMITED, (1932) 2 K. B. 122.

Banker—Conversion—Bearer cheques—Agent of drawer stealing them—Payment by agent into a branch bank of defendants—Paying-in-slip in the name of payee stating merely the name of the agent into whose account the cheque was to be paid—Head office having no means of knowing from the paying-in-slip details—Negligence—Bills of Exchange Act, S. 82—Practice at Banks.

A firm of stockbrokers on the London Stock Exchange sued the defendant bank for conversion of a number of cheques stolen by two of the firm's agents *P* and *S* and paid by them into their private accounts. The cheques were as usual crossed bearer cheques, having been drawn in favour of certain jobbers. *P* who had an account at a branch *W* of the defendant bank took the cheque to one of the defendant's city offices, whose officials did not know him or the drawer or the payee, filled up a paying-in-slip in the name of the payees, and requested that the amounts of the cheques should be credited to his account at the *W* branch. *S* also similarly dealt with his cheques, only they had to be paid to his wife's account. It was a practice of the banks to require a paying-in-slip alone giving the customer's name, branch at which he had an account and the amount of the cheque. The paying-in-slip alone was forwarded to the branch, the cheque itself being directly sent to the Clearing House. The result was that there was nothing to put the officials at the branch on notice to enquire as to the nature of the cheque. It was in evidence that this system was in vogue for over 40 years at several banks without any such difficulty and the bank therefore claimed to be protected by S. 82 of the Bills of Exchange Act

Held, that before the Crossed Cheques Act, 1876 and Bills of Exchange Act, 1882, the defendant bank would have been liable inasmuch as they dealt with the cheques in a manner inconsistent with the rights of the plaintiffs, the true owners, and it would then be no defence that they had no reason to believe that they were converting them. Section 82 of the Act of 1882 gave protection, in the case of crossed cheques, if the Bank received payment for a customer "in good faith and without negligence". But reasonable care there is in the interests of the true owner. The bank have not discharged the burden of proving that they dealt with these cheques without negligence. Their branch manager has not made sufficient inquiries in opening the two customer's accounts, and the banks receiving the cheques have not passed on sufficient information to the customer's branches, as they easily could have done. The system of paying-in-slip without fuller information was inherently defective.

Per Lawrence, J.—*P* and *S* were not customers within the true meaning of S. 82. They had no account at the receiving

offices, and although no doubt the respondent bank with its head office and all its branch offices is a single corporation, yet for certain purposes, branch offices are regarded as distinct trading bodies. Customer in the section means "a person having or about to have an account at the collecting bank".

BRITISH THOMSON-HOUSTON COMPANY, LIMITED *v.* FEDERATED EUROPEAN BANK, LIMITED, (1932) 2 K. B. 176.

Company—Articles of Association—Power to directors to delegate their powers to any director—Action of director thereon—Liability of the company.

By the articles of association of the defendant company, the directors had the power "to delegate to any managing director . . or to one or more of their own body . . such of the powers and authorities hereby conferred on the directors . . as they may consider requisite for carrying on the business of the company or any portion thereof . . ." and to "determine who shall be entitled to sign on the company's behalf bills, notes, receipts contracts and documents".

The plaintiffs were supplying goods to *H* Company, who required a guarantee from the defendants, a banking company. *N* was the Chairman of the Board of Directors and he sent a form of guarantee to the plaintiffs executed by the Bank by *N* as chairman. The Bank disavowed liability on the ground that any guarantee by them had to be executed by two directors under the articles.

Held, that as the articles of association give the power to delegate to one of them, persons dealing with the company, though they are deemed to have notice of the extent of the power, are not bound to inquire into the indoor management of the company to see whether the power has been properly and regularly exercised with all the prescribed formalities. If a stranger finds an officer of the company openly exercising an authority which the directors have power to confer upon him, and especially where he is acting in a matter which is normally entrusted to directors, he is relieved from the duty of further inquiry and is entitled to assume that the power has been regularly and duly conferred.

Royal British Bank v. *Turquand*, (1856) 6 E. & B. 327 and *Mahony* v. *East Holyford Mining Co*, (1875) L. R. 7 H. L. 869, referred to.

Houghton & Co. v. *Nothard, Lowe & Wills, Ltd.*, (1927) 1 K.B. 246, on appeal (1928) A. C 1, considered.

Kreditbank Cassel v. *Schenkers, Ltd.*, (1927) 1 K.B. 826, followed.

The reporter. Mr. W. H. Griffith, has added the following note to the report of this case which is verbatim extracted here:—

"The authorities seem to warrant the following propositions:— If in an action against a limited company the plaintiff relies upon an act of an officer of the company, then

(1) If the company has only a limited power to do the act, *e.g.*, a power to borrow up to a certain amount, the plaintiff is affected with notice of the limitation: *Fountaine* v. *Carmarthen Ry. Co.*, (1868) L.R. 5 Eq. 316.

(2) If the articles of association of the company give the officer authority to do the act provided certain directions are observed, and the officer purports to do the act, the plaintiff is entitled to assume that the directions have been followed: *Royal British Bank* v. *Turquand*, (1855) 5 E. & B. 248: (1856) 6 E. & B. 327; In re *Land Credit Co. of Ireland*, (1869) L.R. 4 Ch. 460; *Mahony* v. *East Holyford Mining Co.*, (1875) L.R. 7 H.L 869; *County of Gloucester Bank* v. *Rudry Merthyr Colliery Co.*, (1895) 1 Ch. 629.

(3) If the articles merely empower the directors to delegate to an officer authority to do the act, and the officer purports to do the act, then—

(*a*) if the act is one which would ordinarily be beyond the powers of such an officer, the plaintiff cannot assume that the directors have delegated to the officer power to do the act; and if they have not done so, the plaintiff cannot recover: *Premier Industrial Bank* v *Carlton Manufacturing Co.*, (1909) 1 K B. 106 [dissented from in *Dey* v. *Pullinger Engineering Co.*, (1921) 1 K.B. 77; *sed quaere*]; *Houghton & Co.* v. *Nothard, Lowe & Wills, Ltd.*, (1927) 1 K.B. 246; in H.L. on another point (1928) A.C. 1. But

(*b*) if the act is one which is ordinarily within the powers of such an officer, then the company cannot dispute the officer's authority to do the act, whether the directors have or have not actually invested him with authority to do it: *Mahony* v *East Holyford Mining Co*, (1875) L R 7 H.L. 869; *Biggerstaff* v. *Rowatt's Wharf, Ltd*, (1896) 2 Ch. 93, 102, 106; *Dey* v. *Pullinger Engineering Co.*, (1921) 1 K.B. 77; *Kreditbank Cassel* v. *Schenkers, Ltd*, (1927) 1 K.B. 826, and the principal case.

It is submitted that actual knowledge on the part of the plaintiff of the contents of the articles of association is irrelevant except to an issue raised as to his *bona fides*."

CHINA NAVIGATION COMPANY, LIMITED *v.* ATTORNEY-GENERAL, (1932) 2 K.B. 197.

Crown—Liability of Crown to British subjects in foreign countries—Crown if bound to protect them free of cost—British shipping company trading in China—If can insist on military supply to protect the ship, free of cost.

An English shipping company was trading particularly in Chinese and neighbouring waters At all material times those waters were infested by pirates. Some protection in the shape of armed guards carried on the ships was for a time provided by the Crown, but in 1928, the Crown authorities intimated to the shipowners that, as the defence of a ship against piratical attack from within was essentially a matter for the owners themselves to deal with, the shipowners must pay the whole cost of the armed guard so provided. The shipowners claimed that as British subjects they were entitled to be given protection free of cost.

Held, by the Court of Appeal (affirming Rowlatt, J.), that there is no legally enforceable duty on the Crown to afford military protection to British subjects in foreign parts to protect British property there in foreign parts from danger. The remedy, if any, is pressure brought by Parliament on Ministers to take steps either by diplomatic action or otherwise to protect British subjects. The matter is one for the uncontrolled discretion of the King as head of the army, both as to whether he shall afford such protection and the terms on which he should afford it and cannot be questioned in Civil Courts There is no compulsion on the company to make the payment; but if they want the services they must pay for them if the King requires them so to pay.

Duties of the Crown to subjects discussed.

WIRRAL ESTATES, LIMITED *v.* SHAW, (1932) 2 K B. 247.

Landlord and tenant—Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, S. 12—Crown as landlord—Sale by Crown to private person—If vendee also entitled to exemption from the Act

From 1915 to 1928, W. H. Estate was in the ownership and possession of the Crown and the defendants became tenants of the above house from the Crown in 1919 at a rent of 7*s*. 6*d*. a week. In 1928 the Crown sold the estate to the plaintiff. On June 1, 1929, the plaintiff determined the tenancy by a notice to quit and a notice of increase of rent to 10*s* 6*d* a week. The defendants accepted these terms. On April 30 they issued a fresh notice to quit and claimed possession. The tenants pleaded the Rent Restriction Acts as defence.

Held, the defendant was entitled to rely on the Acts No doubt the Crown is not subject to or bound by the Rent Restriction Acts by virtue of its prerogative right and so long as the Crown was the landlord, it had the common law rights of lessor and lessee. But the immunity cannot be passed on to successive purchasers who are in quite a different position after the tenancies created by the Crown have run their course or been determined by notice to quit.

Clark v. *Downes,* (1931) 145 L.T. 20, distinguished as a case of an existing tenancy created by the Crown.

MONTAGU STANLEY & COMPANY *v.* J. C. SOLOMON, LIMITED, (1932) 2 K. B. 287.

Principal and Agent—Agreement by defendant to share losses of plaintiff by reason of a customer introduced by defendant—Customer executing assignment deed of his properties—Loss to plaintiff—Mere signing of deed if actual loss.

The plaintiffs were stockbrokers and members of the Stock Exchange, but the defendants were also stockbrokers but not members of the Stock Exchange. By an agreement, contained in a letter written by the defendants to the plaintiffs, it was agreed that in consideration of plaintiffs paying 50 per cent. of any commission received on business introduced by the defendants as agents to the defendants, the defendants shall be liable to the plaintiffs for 50 per cent. of any loss sustained by them in connection with such business. The defendants introduced one *S* to the plaintiffs. He speculated on the Stock Exchange and ran up a debt to the plaintiffs of a very large amount. He also owed to several others. He therefore executed an assignment of all his properties to creditors which deed the plaintiff and defendant also signed. The plaintiffs thereupon claimed from the defendants the loss sustained by them.

Held, that as the deed of assignment provides that, after paying the creditors, the trustees shall "pay the assenting creditors the amounts of their debts but in case of a deficiency rateably in proportion to the amounts of their respective debts", the deed contemplates payment to plaintiffs in full and therefore the claim must be deferred till a loss is actually proved. The execution of the deed is not sufficient proof of loss to entitle them to succeed. It is only an agreement to indemnify against any loss which may occur and not one to answer for the debt of another.

HAMPTON *v* WEST CANNOCK COLLIERY COMPANY, LIMITED, (1932) 2 K. B. 293.

Mine—Coal Mines Regulation Act, 1887, *S.* 13*—Checkweigher—'Interfering with the management of the mine'—Meaning* of.

Coal Mines Regulation Act, 1887, S. 13, sub-sec. (3) states that "a checkweigher shall not be authorised in any way . . . . to interfere with the weighing, or with any of the workmen or with the management of the mine ." Sub-section (4) provides that the owner, agent or manager of the mine may complain to a Court of summary jurisdiction for removal of the checkweigher on the ground that he has interfered with the management of the mine.

A checkweigher at a coal pit also happened to be the secretary of the local branch of the miners' union, of which the men employed at his pit were members. It had been the custom to work a short shift on Saturdays for many years, but the management desired that in future it should be a full shift. The checkweigher tried to persuade the management to revert to short shift but that not being acceded to, he called off his men and walked away with them without working at all that day.

Held, that it amounted to interfering with the management of the mine and the checkweigher was liable to be removed

Per Avory, J.—If what he did did interfere with the management of the mine, it is not necessary that it must be something unlawful, either in the sense that it is in breach of some statute or that it is unlawful according to common law.

Sykes v. *Barraclough*, (1904) 2 K. B. 675 and *Date* v. *Gas Coal Collieries, Ltd.*, (1915) 2 K. B. 454, discussed and distinguished.

SUTTON *v.* DORF, (1932) 2 K. B. 304.

Landlord and Tenant—Rent Restriction Acts—Rent restriction —Statutory tenancy under the Act—Tenancy if "property" so as to pass to trustee in bankruptcy.

A statutory tenancy under the Rent Restriction, etc, Acts is not "property" within the meaning of S. 167 of the Bankruptcy Act, 1914 and does not pass to the trustee in bankruptcy of a statutory tenant. It is a purely personal right.

Parkinson v. *Noel*, (1923) 1 K. B. 117, no longer good law.

FANTON *v.* DENVILLE, (1932) 2 K. B. 309.

Master and Servant—Employer and employee—Accident to employee—Defective plant—Liability of employer—Common employment—Limits of doctrine.

F was engaged as an actor under *D*, a proprietor of a touring dramatic company. *D* did not himself travel with the company, but his representatives, his brother *C* and Stage Manager *S* and *R* the producer were in charge of the arrangements. At a theatre in Gateshead the Company was staging a thrilling melodrama in which there was a scene showing the execution of a murderer by hanging. The proprietor *D* had given instructions not to play this scene but yet it was decided to be staged at the local theatre's desire. *F* was offered a "double" for acting it. There was a rehearsal held for the scene. The local theatre had put together a scaffold with a drop and a mattress on which to drop had been provided by the touring company. *S* and *C* did the drop first safely and then *F* tried but in so doing broke his ankle. In an action for damages against *D* alleging negligence of *D* or his servants, and that it was the duty of *D* to provide fit and safe machinery and a sufficient mattress to make *F's* fall safe,

Held, that *D* did not know that the execution scene was to be performed, and that he had delegated to competent persons the production of plays; that assuming that one of them had negligently provided improper plant for a particular scene, which *D* did not know of, the doctrine of common employment prevents the employee from recovering against his employer. "Even in cases where the negligence relied on by the plaintiff consists of negligence in the supply or maintenance of plant or machinery, the employer is only liable if personal negligence is proved, and if the failure to supply or maintain the plant or machinery in a safe condition is due to the negligence of a manager to whom the duty has been entrusted by the employer, the employer is not responsible unless it can be shown that he failed to use reasonable care to select a competent manager, or that he has in some way been guilty of personal negligence in connection with the instalment or maintenance of the machinery or plant or in permitting the continuance of its use after he became aware of its unsafe condition.

Case-law discussed.

Smith v. *Baker*, (1891) A. C. 325 and *Toronto Power Company* v. *Paskwan*, (1915) A. C. 734, distinguished.

Laubach v. *Co-optimists' Entertainment Syndicate*, (1926) 43 Times L. R. 30, approved.

In the Goods of BOWKER, 1932 P. 93.

Probate—Practice—Omission of directions in will from probate—Power of Court to.

An application was made by an executor to omit from the probate of his testator's will words having no dispositive effect on the ground that the words were "offensive and objectionable and repugnant to the members of the deceased's family, etc."

The Court made an order excluding those words.

The Reporter Mr. R. M. Middleton has added a note citing cases to show that from 1825 onwards the practice has been to allow the omission from probate of non-dispositive words in a will which are of an objectionable character.

JOTTINGS AND CUTTINGS.

Judges and the Reversal of their Decisions.—There has lately come into the present writer's hands an anonymous collection of sketches of a number of the Victorian Judges, published in 1886 —does any one know who was the author?—brightly expressed and containing many an interesting trait of the judicial personages described. Among those sketched is Vice-Chancellor Malins, of whom little is now remembered save that, when an infuriated litigant threw an egg at him, he wittily remarked that the missile must have

been meant " for my brother Bacon ". Of him the author of the book mentioned says that he was " a judge whose personal virtues were judicial vices. So strong was his love of fair dealing and hatred of oppression that he did not look very closely to the means by which he came to decide in favour of those who had aroused his sympathies." Another has said of him that if he dispensed a home-brewed equity of his own, he was at least a good conveyancer, among his pupils while he was still at the bar being the future Lord Chancellor Cairns, and it is said that he never forgave that illustrious man for not making him a Lord Justice. But Cairns probably knew Malins's capacity sufficiently well not to translate him from the position of being overruled to that of overruling others; at all events, Malins never reached the Court of Appeal. And this brings us to the question, how do individual judges relish having their decisions reversed by the superior tribunal? Of Malins we are told that the only point of contact he had with other judges was when he was overruled, and that those occasions, which were many, produced in him an intellectual obstinacy which did not improve matters. Often and often though he suffered reverse, he never missed an opportunity of justifying to his own Bar the correctness of his decisions, and his delight was extreme when, as sometimes happened, a decision of his, after being reversed in the Court of Appeal, was restored in the House of Lords. Judges, after all, are human, and cannot like having their well-thought-out judgments treated with what they deem scant respect in the higher court; and on the other hand, their delight is exuberant when, as also occasionally happens, the higher court takes the same view as they did Some judges have been more unfortunate than others in this matter. Do we not all recall the story, apocryphal no doubt, of the junior members of a former judge's family who danced round the table when "papa had been affirmed in the Court of Appeal." It is said of Jessel that when his attention was called to the fact that the Court of Appeal had overruled one of his decisions, he said: " That is strange; when I sit with them they always agree with me." Even the most distinguished judges have the unpleasant experience of having their views failing to find acceptance, naturally they do not like it, although they are prudent enough to say nothing about it, contenting themselves by wondering how their colleagues could by any process of reasoning have arrived at a conclusion different from theirs. Not all have been as philosophical as Lord Young of the Scots Bench, who, when someone told him that one of his judgments had been approved in the House of Lords, said: "Well, it may be right for all that".—*L.T.*, 1932, p. 172.

Appeals in Vacation.—It is certainly rare that a Lord Justice of Appeal should be asked to sit and hear an application in vacation time; but a case occurred last week where Lord Justice Romer

sat to hear an appeal from the Vacation Judge. The Judicature Act of 1925 is quite clear on the matter. Section (69 1) enacts that in any cause or matter pending before the Court of Appeal, any direction incidental thereto, which does not involve the decision of the appeal, may be given by a single Judge of that Court, and that he may in vacation time make an *interim* order to prevent prejudice to the interests of any parties pending an appeal. Any direction given in this way may be discharged or varied by the full Court when it meets after the vacation. The issue before the Court involved the rights of shareholders in a company which is in liquidation, and though important for the parties concerned, has no general interest to lawyers or the public at large. What is important to notice is the accessibility of the Court of Appeal—or one of its members—in vacation time. The Lord Justice who sits is not bound to come to the Strand, and, in this case, discharged his duties at his home on the South Coast. So the interests of the parties are protected with as little interruption as may be of the well-earned holiday of the members of this high tribunal.—*L.J.*, 1932, p. 152.

The Home Office Letter on the Road Menace.—The observations we made recently on the death toll of the roads were accompanied by the publication in the Press of a circular letter sent by the Home Office to magistrates throughout the country, calling attention to the statistics of killed and injured for 1931—6,499 deaths and over 200,000 persons injured. The former figure shows a slight decrease as compared with 1930; the latter a large increase. Apparently the view of the Home Office is that this menace to public safety can be dealt with by the stricter enforcement of the law. If magistrates will be induced to do their duty, and if coroners and their juries could be prevailed upon to take a serious view of negligence causing death, something would be gained; but not enough. The danger requires more drastic remedies. The Common Law should, as we have already said, be elastic enough to fix liability for manslaughter on the careless motorist. If it is not, there is Lord Buckmaster's Road Traffic Bill, which contains this proposal. But, in fact, the matter cannot be dealt with by deterrent penalties, and it calls for a drastic revision of road traffic as regards drivers' licences and speed, and also noise, and for competent inquiry into cases of death and injury by an authority independent alike of the Home Office and the Ministry of Transport.—*L.J.*, 1932, p. 152.

Judicial Brevity.—An Irish Judge, Chief Baron O'Grady, had a quick method of summing up in the case of a defendant whose previous blameless record was emphasised by the defence. In the case of a prisoner on trial for the theft of stockings, he thus

addressed the jury: "Gentlemen of the jury, here is a most respectable young man, with an excellent character, who has stolen twelve pairs of stockings. You will find accordingly."

And there is the story of the same Judge, in a civil trial of an action for debt, where the defendant pleaded a set-off: "Gentlemen of the jury, this is an action for debt, and the defendant has pleaded as set-off two things: a promissory note with a long time to run, and an old gig with a very short time to run. You may find for the plaintiff."—*L.J.*, 1932, p. 175.

Lord Halsbury and the Long Vacation.—It was in or about the year 1927 that the Long Vacation in England was altered so as to commence on August 1 instead of in the middle of August. Lord Halsbury, as Chancellor, was strongly opposed to any change, and I recently came upon the following observations, written by a barrister now very well known and eminent in his calling, which show some gift of accurate prophesy. It was written in July, 1905, and ran as follows:

"That the date of the Long Vacation will not be changed whilst Lord Halsbury remains in office may be foretold with absolute confidence. When trams run over Westminster Bridge, then, and then only, will lawyers betake them to Margate, Chamounix and Homburg on August 1. The history of the fate of the last resolution of the Bar on the subject is not yet forgotten. A motion in favour of the earlier date having been passed at the annual general meeting of the Bar, Lord Halsbury convened a Council of the Judges to consider the revolutionary project. A majority of the Judges supported the proposals of the Jacobins, and the reactionaries were beaten on a division being taken. But Lord Halsbury was equal to the occasion. Unanimity amongst the Judges was essential, he intimated, before he could deal with so grave a matter. In the absence of complete agreement, it would be more prudent to allow the question to rest. So the Order in Council which the profession as a whole would welcome is still undrafted."—*L.J.*, 1932, p. 175.

Legal Lyrists.—A little collection of poems, bearing the title "Lyrics of Love and Laughter," from the pen of Mr. G. D. Lynch, a member of the Bar, is a reminder that, notwithstanding its reputed dryness, the law has in each generation had its songsters who, as has Mr. Lynch in the collection just mentioned, have shown that even the technicalities of legal nomenclature can be made to lend themselves to humorous treatment in verse. Some of the neatly turned verses by Mr. Lynch are reprinted from *Punch*, which, owing perhaps to the fact that a succession of its editors have been members of the Bar, has never omitted to make full play with legal topics. The present editor, Sir Owen Seaman, has

never forgotten his legal training; nor did his predecessors, Sir Frank Burnand and Tom Taylor, forget theirs. With Tom Taylor, Thackeray, who also was a regular contributor to *Punch*, both in prose and verse, shared chambers for a time in the Temple, which both loved so greatly for its own charm and for the many literary associations that cling to it. Even of those, however, who made the practice of the law their main business and the cultivation of the muse only byplay, not a few have succeeded in the art of writing pleasant verse. Arnould, whom all lawyers know as the author of the standard work on marine insurance, possessed the gift of turning out very neat verse; so, too, as all readers of his biography are aware, did Lord Bowen, who was a genius both in law and in literature, his translation of Virgil being a masterpiece of choice rendering. It will thus be seen that the law has reason to be proud of her votaries who have at the same time cultivated letters, and, in particular, poesy.—*L.T.*, 1932, p. 203.

Life of Lord Oxford and Asquith.—The forthcoming biography of Lord Oxford and Asquith is a work that will make a potent appeal not only to those engaged in politics, but to all members of the legal Profession, as it was in the law that the great statesman won his spurs before entering upon his Parliamentary career. It is of interest to recall that in his early days at the Bar he did not disdain the useful but comparatively humble role of lecturer at the Law Society, a post, however, which he did not hold long in view of the ever-increasing pressure of Bar work. It is further of interest to remember that he succeeded R. S. Wright in the chambers in Paper-buildings and took over also from Wright the "devilling" services of the author who made his name as Anthony Hope, but whom we now know as Sir Anthony Hope Hawkins. Of Asquith that genial writer has left it on record that " there has been nothing in my life that I have valued and enjoyed more than working under and with him, as I continued to do not infrequently until he became Home Secretary in August 1892. When he came back to the Bar he remembered me and sent for me again; but by that time I had gone," the lure of letters proving stronger than that of the law. Asquith, it will be remembered, was the first to break through the old convention that a member of the Bar who has held the office of Home Secretary finally severs his connection with the Bar, so far, at least, as practice is concerned. Sir John Simon followed in the footsteps of his old leader in this matter.—*L.T.*, 1932, p. 203.

Municipal Titles.—An interesting memorandum has been issued from the Home Office on the subject of the titles which the heads of certain cities in England and Scotland are entitled by law to bear. The idea would appear to have gained ground that if the civic head of a municipality is entitled to be designated Lord Mayor, or, in

Scotland, Lord Provost, that *ipso facto* justifies him in being addressed as "Right Honourable". This assumption has been declared to be ill-founded, and that in England the only Lord Mayors entitled to the appellation of " Right Honourable " are the civic heads of the City of London and of York, this being their privilege acquired by immemorial usage; in Scotland, the corresponding dignitaries entitled to be called " Right Honourable " being the Lord Provost of Edinburgh and the Lord Provost of Glasgow, and in the case of the latter the privilege has only been conferred by recent grant, as was also a similar privilege conferred on the Lord Mayor of Belfast. This desire to magnify the office of the civic head of a great municipal corporation is not unnatural, for it seems to enhance the dignity of the city whose chief is called Lord Mayor. But most people, so they are constituted, love to assume a title which will distinguish them from the ordinary run of men, a circumstance which has been exemplified in the judicial as well as in the municipal sphere. An amusing story has come down to us of Serjeant Adams, who on his appointment as first paid assistant judge of the Middlesex Sessions gave out from the bench that he had Lord Denman's authority for saying that he *ought to be* addressed as "my Lord," and the practice of so styling the occupant of the equivalent position of Chairman of the London Sessions has continued from that time. On Lord Denman being asked whether he had given such directions as Adams indicated, he said: " Well, the truth is Jack Adams came to me and said that the Bar at the Middlesex Sessions wished to know whether there would be any *impropriety* in their calling him 'my Lord,' and I told him I could see no objection to their styling him what they pleased, so long as they did not call him Jack when he was on the bench, as that might appear disrespectful to a learned Judge." It thus appeared that a qualified permission was interpreted as an express ordinance —*S.J.*, 1932, p. 638.

A Living Order.—It is to be hoped that some way will be found to provide the means for holding this election. The time has long since arrived for it, for, as the textbooks show us, there are now ten vacancies for Irish representative Peers. There are 157 Peers qualified to elect, and although no Irish peerage has been created since Queen Victoria conferred one upon Mr. George Curzon (as he then was), when he was going Viceroy to India in 1898, the power of the Crown to create them has not been abridged. Article 5 of the Free State Constitution asserts the right for the Executive Council in Dublin to advise on the conferment of titles of honour if these are to be conferred " in respect of any services rendered in or in relation to the Irish Free State"; but that limitation does not seem to restrict the Crown's right to create peers of Ireland for other services. As long as the Order is alive there is no reason why the right to be represented in the Parliament at Westminster should be abridged. The Irish Peers, moreover, are representative

of Ireland as a whole. They do not represent either of the political areas into which the arrangements made after the War divided what is, in many respects, one country. The Irish representative Peers, like the Irish football teams, have been proof against the fissiparous tendencies which many old-fashioned people deplore. The football players can, without aid, preserve their own united existence: but apparently it will take an Act of Parliament to save the older and more dignified body.—*L.J.*, 1932, p. 178.

A Public Attraction as a Public Nuisance.—While no one can be sorry that the unseemly spectacle of a beneficed clergyman of the Church of England exhibiting himself or allowing himself to be exhibited in a barrel has been discontinued, there may be two opinions as to the method by which this object has been achieved. The showman who arranged for the exhibition was charged with causing an obstruction to the highway, and the clergyman with aiding and abetting. The police were prepared to call evidence that a large crowd had gathered in the public road, causing a hindrance to free passage and repassage along it. In effect, their case would have followed the well-known authorities as to queues, such as *Barber* v. *Penley,* (1893) 2 Ch. 447, and *Lyons* v. *Gulliver,* (1914) 1 Ch. 631, in the evidence of the crowd and obstruction. In each of these cases injunctions were granted to the plaintiffs on the ground that the concourse of people who assembled interfered with the free passage of customers to their premises and was thus an actionable nuisance as an infringement of their private rights. The cases of *R.* v. *Carlile,* (1834) 6 C. & P. 636, and *R.* v. *Lewis,* (1881) 71 L. T. n. 117, were prosecutions in respect of the public nuisance caused by crowds similarly attracted. In *R.* v. *Carlile* there was argument that the exhibition was offensive—considering that it consisted of the effigy in a shop-window of a Bishop arm-in-arm with the Devil the suggestion was not without substance—but that in *R.* v. *Lewis* was admittedly innocuous, save for the crowds it drew. In a note on a similar case in respect of Gamage's then new premises at the Marble Arch (74 Sol. J. 823), we drew attention to the dissenting judgment of Phillimore, L. J., in *Lyons* v. *Gulliver,* to the effect that every tradesman or entrepreneur was entitled to attract the public to his premises, and should not be penalised if he did so more successfully than his fellows, the regulation of crowds in streets being part of the normal duty of the police force. There appears to be plenty to be said for this view, but it could only be established, if at all, by the House of Lords disapproving of *Lyons* v. *Gulliver* and the other cases.—*S.J.*, 1932, p. 649.

Obstructing the Police by Warning Offenders.—In a short report of a case at the Marylebone Police Court, it appeared that a

costermonger who warned a street bookmaker that a policeman was approaching was fined £5 for obstructing the officer, the bookmaker having, on the signal, escaped into a private house. The question whether the warning of offenders against the law of the approach of a constable is a wilful obstruction of the latter in the course of his duty within the Prevention of Crimes Amendment Act, 1885, has been considered in two cases as to police "traps" for motorists, namely, *Bastable* v. *Little,* (1907) 1 K. B. 59, and *Betts* v. *Stevens,* (1920) 1 K. B. 1. In *Bastable* v. *Little,* the respondent warned the drivers of approaching cars against the trap, which they accordingly all passed at speeds strictly within legal limit. In the absence of evidence that the drivers of the cars when or before being warned were going too fast, however, they were acquitted. Ridley, J., was of opinion that obstruction within the section must be in the nature of physical force or threats, but Alverstone, L C. J., and Darling, J., did not agree with him. In *Betts* v. *Stevens*, the facts were very similar, but, no doubt, in view of the previous case, the police adduced evidence that some of the warned drivers had been travelling at illegal speed, and the Court, consisting of Alverstone, L. C. J., Darling, J., and Bucknill, J., upheld the conviction of the magistrates. In *Bastable* v. *Little,* Darling, J., said: "In my opinion it is quite easy to distinguish the cases where a warning is given with the object of preventing the commission of a crime from the cases in which the crime is being committed, and the warning is given in order that the commission of the crime may be suspended while there is danger of detection" He quoted this passage in his judgment in *Betts* v. *Stevens,* observing that the gist of the offence was the intention. The case at Marylebone no doubt then followed this ruling. The report being very short, it is not clear whether the defendant was in the bookmaker's pay as a "sentinel," or a mere volunteer, but, for the offence charged, the distinction would appear to be immaterial. The warning given was not the kind which, for example, might be volunteered by an elderly gentleman to to youths playing pitch and toss in the streets, that they should desist from an illegal pastime, lest a constable should come, but merely to suspend the commission of the offence until the danger of the law was past. It is not without significance, however, that all three of the above cases concerned obstruction of constables in the enforcement of laws deemed unreasonable by a large section of the public and continually flouted.—*S.J.*, 1932, p. 650.

Monies or Moneys.—We see that Mr. H. Morley Hooper, of Huddersfield, in a letter to the *Observer* of September 25, complains that there is a growing tendency for the plural of the word "money" to be spelt "monies," and that this seems to be especially true in legal and Government circles. He points out that the plural of money is clearly moneys, just as the plural of valley

is valleys. If "monies," why not "vallies"? Of course, he is right, and the form "monies" should not be used, though we agree that this is often done. For Government circles we cannot speak, but in legal documents the two forms of the plural occur, and this is noticed in the *New English Dictionary*—"For the plural, the irregular spelling of monies is still not uncommonly met with, especially in sense 4." Sense 4 refers to legal and semi-legal parlance, or as an archaism. But the law books keep to the correct form: see, for example, K. & E., 12th edn., II, 730; Enc F. & P., 2nd edn., X, 537. *Prideaux* seems to avoid the question by keeping to the singular. And although the Reports show that testators use the form "monies," yet the reporters and the text-book writers turn this into the correct "moneys" in referring to the cases: see *Re Derbyshire*, (1906, 1 Ch. 135; 75 L. J. Ch. 95), "monies owing to me," as stated in the head-note and in *Jarman*, 7th edn. 1270; and *Re Woolley*, (1918, 1 Ch. 33; 87 L. J. Ch. 169) "any other monies," as stated in the new Supplement to *Stroud's Judicial Dictionary*, p. 589. In these books "monies" is quoted as "moneys". So on the actual evidence, as we have hurriedly collected it, testators seem to be chiefly responsible for "monies," but legal writers are uniform in keeping to the correct form. For the other form, the N. E. D. quotes an old dramatist as making a Jew say: "Why, truly, monies is a goot thing." A very just observation, apart from any question of spelling.—*L.J.*, 1932, p. 189.

Second Thoughts.—On the principle that second thoughts are sometimes an improvement on their predecessors, a Scottish litigant in the old days who was dissatisfied with the judgment pronounced by the sheriff was entitled, instead of carrying the case on appeal to the Court of Session, to petition the Judge who had decided against him to reconsider his judgment. Originally there appears to have been no limit to the number of times a disappointed suitor could have recourse to this procedure, but in 1709, this having come to be considered an undue licence, the number of reclaiming petitions as they were called was restricted to two, and of this full advantage was taken, for when has a litigant against whom judgment has been given ever been satisfied that the decision was right? On a number of occasions, Sir Walter Scott, as Sheriff of Selkirkshire, was asked to reconsider the judgments he had delivered, and twice at least he became somewhat exasperated, in one instance on account of certain allegations in the reclaiming petition being couched in terms disrespectful to the Court. As to this, Sir Walter, in a note to his interlocutor, said: "If, in future, a passage shall occur in any paper which shall appear derogatory to the Court, he will not only order the paper to be withdrawn, but accompany his censure with a suitable fine." In one case, however, the reclaiming petitioner was successful in inducing Sir Walter

to reverse his decision on a reconsideration of the facts and the law. This old method of seeking redress by a dissatisfied suitor has long been obsolete, but in theory, at least, there was something to be said in its favour inasmuch as it was less expensive than an appeal to the Court of Session; on the other hand, judges, even the best of them, being only human, are naturally disinclined to admit that they have arrived at a wrong conclusion, and so, on the whole, it is the safest course to leave it to an appellate tribunal to correct the mistakes, or what must be deemed to be such, of the subordinate judicatories.—*L.T.*, 1932, p. 235.

Macaulay as Jurist.—While the whole English-speaking world has been paying tribute to the memory of Sir Walter Scott for his achievement in literature, and in these columns something has been written to recall to professional readers the not indistinguished part he played in the law, it is worth recalling, *a propos* the addition to the world's classics, of Sir George Trevelyan's "Life and Letters of Macaulay," with an introduction by Professor G. M. Trevelyan, that the great historian, who saw, like Scott, that any distinct picture of the past must not be confined to a narrative of purely political affairs, but must take account of the everyday life and work of the people, was, again like Scott, a member of the Bar. It is true that he did not continue an active member of the Profession after the first few years when he went the Northern Circuit, and watched the tactics of great advocates like Brougham and Pollock, but he never lost his interest in jurisprudence, his knowledge of which he was to turn to fruitful account when, years later, as legal member on the council in India, he took the leading part in the preparation of the draft penal code, which, after Macaulay had passed away, and with certain amendments, received statutory force. Macaulay's ingenious method of illustrating the meaning of the various sections of the code by concrete examples has had an abiding influence on legal writers.—*L.T.*, 1932, p 236.

Curves of Litigation.—In these days of the popularity of statistics and index numbers it may be of interest to observe the recent curves of litigation, that is, to note what classes of case bulk most largely in the Digests. It has, of course, to be borne in mind that the number of cases reported is only a fraction of those actually decided in the courts, but the reports give an approximate estimate as to the classes of actions which at any particular time are the most common. It is curious to note how the numbers vary at different times. A few years ago, before the multitudinous conundrums set by the Rent Restriction Acts had been solved, the cases under the caption "Landlord and Tenant" were swollen enormously, and the Digests bore indubitable testimony to the frequency with which actions affecting tenancies came before the courts. Now, if we take the latest issue of the Law Reports Digest we

shall see that the whole subject of landlord and tenant is comprised within five columns, and of these not quite a column is required for cases under the much-discussed Acts. Again, appeals under the Workmen's Compensation Acts have shrunk very markedly although there is still a fair number, chiefly on questions of fact As might be expected, the subject of "Revenue" is for the moment predominant in the Digest, no fewer than twenty columns being required to give the headnotes to the cases. With the income-tax at its present abnormally high rate everyone is naturally disposed to examine his assessment with meticulous care and to contest every apparent overcharge, with the result that the Judge taking revenue cases is kept busily employed in solving the problems set by the Income Tax Act and applying its provisions to the complicated facts of individual cases. Another subject which bulks largely and competes with revenue for first place is "Shipping". The large number of shipping cases may not at first seem so easily explicable as the number appearing in the revenue list, but although the kind of case with which practitioners in the commercial court are concerned has declined in sympathy with the decline in shipping, which we all deplore, shipping still goes on and collisions are unfortunately of almost everyday occurrence, echoes of which are heard in the Admiralty Court. Insurance in its various branches has taken an upward trend, more especially in connection with motor cars, which are gaining an unenviable notoriety in these days for the number of accidents they cause. Lastly, the interpretation of wills, which formerly constituted no small part of the work of the Chancery Division, seems to have fallen away-but whether this is due to the more careful draftsmanship of these documents we shall not venture to affirm.—*S J.*, 1932, p. 661.

BOOK REVIEWS.

CONSTITUTIONAL LAW OF ENGLAND, COLONIES, DOMINIONS AND INDIA WITH A CHAPTER ON LOCAL GOVERNMENT OF ENGLAND, FRANCE, GERMANY, SWITZERLAND AND AMERICA, by S. A. Desai, Barrister-at-Law.

The author of this neatly bound volume has very wisely hit upon the idea of a concise, yet comprehensive, survey of the Constitutional Law of England as administered at Home as well as in the Colonies and Dominions. Nothing could be more opportune than a treatise on such subjects as Local Government and Indian Constitution to the Indian reader who is living in times which are experiencing the throes of a new Constitution-making for India. The writer is amply justified in his extraction of information from the Fabian Tracts dealing with the many problems of Local Government. The book contains all the varied topics connected with Constitutional Law under proper heads. The clear exposition

and adequate method of treatment distinguish the book from the rest of such publications. It is a fine handbook for the student and the lawyer.

HANDBOOK OF MAHOMEDAN LAW, by M. D. Manek, B.A., LL.B. First Edition. Price Rs. 2-8-0.

One cannot but view with satisfaction this little book mainly intended to supply the law student with a correct and brief summary of all the principles underlying the law pertaining to Mahomedans. The author has well chosen to make the subject intelligible by a timely survey of the historical background. Case-law has been exhaustively and carefully appended to the relevant matters requiring elucidation and interpretation. On the whole it is a successful attempt and can unfailingly provide the student with a deal of information especially while preparing for examinations.

THE LAW OF PARTNERSHIP, by Mr. N. Rajagopalachariar, B.A., B.L., Advocate, Madras. Price Rs. 7.

It is with pleasure that we received a copy of the Law of Partnership by Mr. N. Rajagopalachariar. The learned author is already known to Indian Lawyers as the author of the Law of Income-tax in India. The plan adopted by the author in this work is similar to the one adopted by him in his other book, *i.e.*, of treating the subject in the form of chapters and giving the text of the Indian Partnership Act later, with references to the earlier pages given under the sections. In this respect, the treatment of the subject by the author differs from what we have seen in the other books that have been written on the Act. It must be acknowledged that this book is a thoughtful production on the subject and the author has not rested content with giving references to the decisions and the points laid down by them. He has criticised the decisions in the light of principles and even the sections of the Act where the author thinks they are the result of bad drafting have not escaped his searching criticisms. It may be that the reader may not agree with all the criticisms by the author but there is no gainsaying the fact that the work is one which will provoke thought. One noticeable feature in the references to the decisions given by the author is that he gives the particular pages of the reports where the point is dealt with, a method which will considerably lighten the work of the busy practitioner who otherwise will have to wade through a large number of pages. He has also given the special facts of each case in as few words as possible, when giving references to the cases. It is needless to add that the author has brought the case-law up to date and also given the text of the English

Partnership Act, the repealed provisions of the Indian Contract Act dealing with Partnership, the Report of the Expert Select Committee on the Indian Partnership Bill and the notes on the clauses of the Bill and other useful information on allied topics We wish to draw pointed attention to the fact that the index to the work is full and really helpful in finding out where any particular point is dealt with or discussed. We hope that the book will meet with the appreciation which it richly deserves.

THE ELEMENTS OF THE LAW OF PARTNERSHIP FOR STUDENTS, by Mr. N. Rajagopalachariar, B.A., B.L., Advocate, Madras. Price Rs. 2-8-0.

This is an abridged edition of the work which we have reviewed above omitting the discussions and criticisms on the cases and the sections which will be useful to the lawyer but embarrassing to students. The plan adopted is the same as in the bigger book. Only the more important cases are referred to, to bring home the principles to the students. We have no doubt that this book will really be helpful to the students.

THE INDIAN PARTNERSHIP ACT, by S. R. Dongerkery, B.A. (Hons.), LL.B., Attorney-at-Law, High Court, Bombay.

This is a lucid commentary on the Indian Partnership Act. The learned author has in the annotations to the sections clearly drawn attention to the various points dealt with by the sections under appropriate headings and he has made a judicious selection of the cases for illustrating the principles underlying the Law of Partnership and the various sections. We agree with the author in thinking that a judicious selection of cases will be more helpful to the reader than giving entire case-law on the subject which the reader can easily get from the Digests. The appendices give useful information on various allied topics such as Receivers and Injunctions in Partnership Suits, Partnership and Insolvency, Illegal Partnership, Legal proceedings by and against Firms and Partners, the Reports of the Special Committee and Select Committee. The provisions of the English Partnership Act of 1890 and those relating to Partnership in the Indian Contract Act are also given. We have every hope that this book will be found useful for clearly understanding the provisions of the Act.